

## **Section 9**

### **VIOLATIONS AND SANCTIONS**

## Violations and Sanctions

As outlined in Section eight (8) the Arizona WIC Program monitors all authorized Vendors to assure that they understand the WIC program's, regulations, guidelines and procedures. It is important that the Vendor become familiar with program violations that the Department or contractor will be looking for when conducting Vendor monitoring activities. Upon substantiation of Vendor error, abuse or fraud committed by the Vendor or its employees, the Department shall suspend or disqualify the Vendor from further participation in the Arizona WIC Program for a period of not less than thirty (30) calendar days. In addition, Vendors who have been disqualified from the program may be requested to provide a collateral bond or Irrevocable Letter of Credit of a minimum of 1% of their total annual WIC sales, but not less than \$1000.00 before being re-authorized as a WIC Vendor. Vendors who violate WIC regulation may lose applicable liquor and lottery or gambling licenses.

The imposition of sanctions are not to be construed as excluding or replacing any other criminal or civil sanctions, penalties or remedies applicable under any federal or state law. Any method used by the Department to determine a violation is an investigation; an infraction of WIC regulations or other requirements is a violation; an administrative action taken as a result of a violation is a sanction. All reference to days or years shall be calculated in calendar days or calendar years. The Department is not required to provide the Vendor with prior warning that violations are occurring before imposing a sanction. Disqualification of the Vendor from the Arizona WIC Program may result in disqualification from the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program. The Department shall disqualify a Vendor who has been disqualified from the Food Stamp Program. The length of disqualification shall be for the same amount of time as the Food Stamp Program disqualification, but may start at a later date.

A pattern of incidences is usually needed to warrant a Federal mandatory sanction. The pattern is influenced by both its severity and number of incidences. Thus, a pattern may be a short period of disproportionately large shortfalls or an extended period of small shortfalls. However, in cases of extreme program abuse, it only takes one violation to warrant a Vendor disqualification. For example, the Department shall disqualify a Vendor for six (6) years for one (1) incidence of buying or selling food instruments for cash (trafficking); or one (1) incidence of selling firearms, ammunition, explosives or controlled substances in exchange for food instruments. Additionally, the Department shall permanently disqualify a Vendor convicted in a court proceeding of trafficking in food instruments or selling firearms, ammunition, explosives or controlled substances in exchange for food instruments.

In addition to Department sanctions, Federal Regulations establish the length of disqualification for mandatory sanctions appropriate to the severity of the violation. For mandatory Federal sanctions, the Department must impose either disqualification or a civil Money Penalty in lieu of disqualification.

In situations where a Vendor is found to have committed multiple Federal violations during the course of a single investigation, the mandatory sanction against the Vendor shall be determined by the most severe violation or the assessment of multiple civil money penalties. In order to reduce or eliminate further sanctions, sanction training will cover all of the topics presented at the regional training. In Category I, II, or III Violations the first violation in any category shall result in mandatory training.

## Department Violations and Sanctions

### **Procedures (Department)**

#### **Vendor Category I Violations:**

- A. Acceptance of a food instrument which is pre-signed, pre-dated or post-dated or missing the signature;
- B. Failure to allow a Vendor Site Review and/or to provide food instruments for review;
- C. Failure to provide requested inventory records.

#### **Category I Violations: Sanctions**

First Offense	=	9 Points	=	Training
Second Offense	=	18 Points	=	Written Warning
Third Offense	=	27 Points	=	Suspension for thirty (30) calendar days
Fourth Offense	=	36 Points	=	Suspension for ninety (90) calendar days

#### **Vendor Category II Violations:**

- A. Treat a WIC participant/authorized representative discourteously. For example: Not allowing WIC participants/authorized representatives access to all check-out lanes (excludes "Cash Only" and "Self Serve" check out lanes);
- B. Failure to remove or allow the purchase of WIC infant formula after the manufacturer's expiration date printed on the can;
- C. Collection of sales tax on WIC items;
- D. Permit exchange of WIC foods purchased with a WIC food instrument for unauthorized foods, non-food items, cash or credit. For example, exchange infant formula for infant fruit or vegetables;
- E. Failure to attend mandated training other than the mandatory regional training or administrative hearings.

#### **Category II Violations: Sanctions**

First Offense	=	10 Points	=	Training
Second Offense	=	20 Points	=	Written Warning
Third Offense	=	30 Points	=	Suspension for ninety (90) calendar days
Fourth Offense	=	40 Points	=	Suspension for one-hundred eighty (180) calendar days

#### **Vendor Category III Violations:**

- A. Seek restitution, either full or partial payment, from participants/authorized representatives for the value of unauthorized items purchased, food instruments rejected for payments, damaged food instruments, or the difference in value of the cost of foods which exceeds the maximum value of the food instrument, even if the food instrument was not deposited;
- B. Hinder or prevent authorized WIC personnel from entering the store or impeding on-site education, monitoring or authorized investigation.

#### **Category III Violations: Sanctions**

First Offense	=	13 Points	=	Training
Second Offense	=	26 Points	=	Written Warning
Third Offense	=	39 Points	=	Suspension for one-hundred eighty (180) calendar days
Fourth Offense	=	52 Points	=	Suspension for two-hundred seventy (270) calendar days

**Vendor Category IV Violations:**

- A. Discriminate on the basis of race, color, disability (handicap), age, national origin or gender (sex);
- B. Conflict of interest with either the Department or local agency;

**Category IV Violations: Sanctions**

First Offense      =    150 points    =    Disqualification for one (1) year

## Penalty Points

The Department uses a method of penalty points to monitor Vendor violations and assign suspensions, disqualifications or terminations. The Department shall maintain records of penalty points assessed against Vendors. One time only, the first twenty-seven (27) penalty points resulting in the first suspension (not disqualification) shall not accrue against the Vendor's record and shall be removed from the category which resulted in the suspension after the suspension has been served.\* **Regardless of the number of times a Vendor may contract with the Department, the Department will only apply the twenty-seven (27) penalty point policy a total of one time.**

Penalty points for each violation within each category will continue to accrue on the Vendor's record for a period of two (2) calendar years from the date the Department mailed a violation sanction letter. The Department will notify the Vendor when penalty points have been removed, how many points have been removed and how many points remain in each category. Penalty points shall accrue and may accumulate to provide suspensions of greater length than the initial suspension. If ownership and control changes, the Vendor Contract will be terminated and accrued penalty points will be dropped from the Department's records. **Federally mandated sanctions are exempt from this provision.**

The Department shall assess penalty points based on the following values:

- |                            |   |                          |
|----------------------------|---|--------------------------|
| A. Category I Violations   | = | 9 Points per violation   |
| B. Category II Violations  | = | 10 Points per violation  |
| C. Category III Violations | = | 13 Points per violation  |
| D. Category IV Violations  | = | 150 Points per violation |

The Department may assess multiple penalty points to the Vendor at the same time, based on the existence of multiple violations at the time of inspection, compliance buy or review. The Department shall assign suspensions on the following penalty point schedule:

- |             |   |                   |
|-------------|---|-------------------|
| A. 30 Days  | = | 27 Points accrual |
| B. 90 Days  | = | 30 Points accrual |
| C. 180 Days | = | 39 Points accrual |
| D. 270 Days | = | 52 Points accrual |

The Department shall assign disqualifications on the following penalty point schedule:

- |              |   |                          |
|--------------|---|--------------------------|
| A. 1 Year    | = | 150 Points per violation |
| B. 3 Years   | = | 450 Points per violation |
| C. 6 Years   | = | 600 Points per violation |
| D. Permanent | = | 750 Points per violation |

Vendor suspensions that extend past the end of the contract period shall continue in force into the new Contract period until the termination date of the suspension period. Vendors shall complete the application, contracting and training process as though the suspension were not in effect, noting the suspension on the application where indicated. If the Vendor meets all application, training and contract requirements, the new WIC Contract shall be issued with the suspension in place. The suspension shall end on its appointed termination date.

Vendor suspensions of one (1), three (3) or six (6) years are disqualifications. The Vendor who is disqualified shall not be authorized to contract with the Arizona WIC Program during the period of the disqualification. At the end of the disqualification period, the Vendor may reapply for the current contract period.

**\*NOTE: "The intent of the language of this rule has always been for the one time twenty-seven (27) penalty points reduction to occur after the suspension is served and the Department has interpreted it that way. This revised language excludes any possible alternative interpretation."**

## Vendor Sanctions Point System for Suspension

### SANCTION POINTS

		Number Of Violations			
Offense Category	Number Of Points	1	2	3	4
Category I	9 pts	9	18	27	36
Category II	10 pts	10	20	30	40
Category III	13 pts	13	26	39	52
Category IV	150 pts	150	-	-	-

### SUSPENSIONS

Number of Days	Number of Points
30 Days	27 Points
90 Days	30 Points
180 days	39 Points
270 days	52 Points

### DEPARTMENT DISQUALIFICATIONS

Time Period	Number of Points
1 Year	150 Points

## POINT COMBINATIONS FOR SUSPENSIONS/DISQUALIFICATIONS

30 Days 27 Points	3 Category I Violations
90 Days 30 Points	3 Category II Violations 4 Category I Violations
180 Days 39 Points	3 Category III Violations
1 Year 150 Points	1 Category IV Violation 3 – 1 Year Federal Violations
3 Years 450 Points	3 – 3 Year Federal Violations

Note: Point combinations for suspensions or disqualifications will occur if the Vendor's violation record shows pattern of error or abuse.

### Sanction Training

When Vendor monitoring uncovers errors or abuses as outlined in this Section, the first offense in Category I through III equates to a mandatory training session. The first time a Vendor is sanctioned and training is required in any Category, it will be held at the Vendor's location. This will provide the Vendor with the opportunity to have as many of its employees trained as deemed appropriate. A management staff must attend this session.

In the event that the Vendor is sanctioned and requires additional training, the location of the session will be identified in the certified letter. At a minimum, a management representative shall attend.

## Federal Violations and Sanctions

### **Procedures (Federal regulations)**

Federal regulations have determined that the following violations shall result in mandatory sanctions of not less than one (1) year disqualification up to permanent disqualification:

1. Vendors convicted of trafficking of WIC food instruments;
2. Administrative finding of trafficking/illegal sales of WIC food instruments;
3. Sale of alcohol beverages or tobacco products;
4. Claiming reimbursement in excess of documented inventory;
5. Overcharging;
6. Outside of authorized channels, including unauthorized vendors or persons;
7. Supplemental food not received;
8. Credit or non-food items;
9. Unauthorized food items.

A Vendor who has previously been assessed a mandatory sanction for any of the above violations and receives another mandatory sanction for any of the above violations, shall have the mandatory sanction penalty doubled. **Civil Money Penalties may be doubled up to the limits allowed.**

Vendor who has previously been assessed two (2) or more mandatory sanctions for any of the above violations and receives another mandatory sanction, shall be assessed a mandatory sanction that is double the time period of the third mandatory sanction and all subsequent mandatory sanctions. The Department will not impose a Civil Money Penalty in lieu of a disqualification for hardship in third (3<sup>rd</sup>) or subsequent disqualification.

A pattern of incidences is needed to warrant a mandatory sanction. The pattern is influenced by both the severity and number of incidences. For example, a pattern may be a short period of disproportionately large shortfalls or an extended period of small shortfalls. Exceptions to the "pattern" requirement include the sale of alcohol, alcoholic beverages or tobacco products and trafficking, in either of which case a single violation will trigger the mandatory sanction.

A Vendor that has been disqualified from the Food Stamp Program will be disqualified from further participation in the WIC Program. The length of the disqualification shall be for the same amount of time as the Food Stamp Program disqualification, but may start at a later date.

**NOTE:** Disqualification from the Arizona WIC Program may result in disqualification from the Food Stamp Program.

### **Category Violation:**

#### **1 Year**

Provide unauthorized food items in exchange for WIC food instruments, including, charging for WIC foods provided in excess of those listed on the food instrument. (pattern)

### **Category Violation: Sanctions**

First Offense	=	50 Points	=	Written Warning
Second Offense	=	100 Points	=	2 <sup>nd</sup> Written Warning
Third Offense	=	150 Points	=	Disqualification for one (1) calendar year



**Category Violations:****3 years**

- A. Claim reimbursement for WIC food instruments in excess of documented inventory; (pattern)
- B. Charging WIC participants/authorized representatives more for supplemental food than non-WIC customers or charging WIC participants/authorized representatives more than the current shelf or contract price; (pattern)
- C. Receive, transact and/or redeem WIC food instruments outside of authorized channels, including the use of an unauthorized Vendor and/or an unauthorized person; (pattern)
- D. Charging for WIC food items not received (including rainchecks); (pattern)
- E. Allow exchange of WIC food instruments for credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances. (pattern)

**Category Violation: Sanctions**

First Offense = 100 Points = Written Warning  
Second Offense = 300 Points = 2<sup>nd</sup> Written Warning  
Third Offense = 450 Points = Disqualification for three (3) calendar year

**Category Violations:****3 years**

Exchange of WIC food instruments for alcohol, alcoholic beverages or tobacco products.

**Category Violations: Sanctions**

First Offense = 450 Points = Disqualification for three (3) calendar years

**Category Violations:****6 years**

- A. Administrative findings of one (1) incidence of trafficking of WIC food instruments;
- B. Administrative findings of one (1) incidence of selling firearms, ammunition, or explosives in exchange for WIC food instruments;
- C. Administrative findings of one (1) incidence of selling controlled substances in exchange for WIC food instruments.

**Category Violations: Sanction**

First Offense = 600 Points = Disqualification for six (6) calendar years

**Category Violations:****Permanent Disqualification**

- A. Conviction of trafficking of WIC food instruments;
- B. Conviction of selling firearms, ammunition, or explosives in exchange for WIC food instruments;
- C. Conviction of selling controlled substances in exchange for WIC food instruments.

**Category Violations: Sanction**

First Offense = 750 Points = Permanent Disqualification

### **FEDERAL DISQUALIFICATIONS**

Time Period	Number of Points
1 Year	150 Points
3 Years	450 Points
6 Years	600 Points
Permanent	750 Points

## Civil Money Penalty

Civil Money Penalties are intended to be used only in those situations in which the disqualification of the Vendor would cause a hardship, not just an inconvenience, to participants if there are no currently authorized WIC Vendors in the disqualified Vendor's geographic area. (Participant Access is defined in Section 14 of this Manual.) **Federally mandated sanctions, conviction of trafficking of WIC Food Instruments; conviction of illegal sales of firearms, ammunition, explosives or controlled substances; and/or Vendor assessed a third or subsequent sanction of any violation in the mandatory sanction category (Federal Violations) as defined in this section are exempt from this provision.**

Determination of eligibility for Civil Money Penalties are at the **sole discretion** of the Department. The calculation of the Civil Money Penalties amount shall be made by the Department.

If the Department authorizes Civil Money Penalties in lieu of disqualification, the Vendor shall submit a written Corrective Action Plan which indicates the steps the vendor shall take to assure that the violations shall not reoccur.

Civil Money Penalties do not relieve the Vendor of the financial liability for previous compliance issues such as outstanding overcharge recoveries or payments due for the sale of unauthorized foods. Such outstanding liabilities must be paid in addition to the Civil Money Penalty.

Vendors who have been assessed Civil Money Penalties shall provide a collateral bond or Irrevocable Letter of Credit of a minimum of 1% of total annual WIC sales, but not less than \$1000.00.

The Department shall not accept voluntary withdrawal by the Vendor to avoid payment of Civil Money Penalties.

If Civil Money Penalties are not paid as required, the Department shall impose the disqualification corresponding to the violation(s) for which the Civil Money Penalties were assessed.

Any Civil Money Penalties imposed shall not exceed \$10,000 per violation and \$40,000 per investigation. All monies collected as a result of Civil Money Penalties are determined to be WIC Program income.

### **When to Offer a Civil Money Penalty**

Civil Money Penalties may only be offered to a Vendor in lieu of disqualification when inadequate participant access would otherwise occur. (See Participant access.) Participant access is not a static condition. Each time a Vendor is disqualified, the potential of hardship must be re-evaluated. The determination of inadequate participant access may require renewed review of the disqualification status of all Vendors in the area. Only the Department has the option of offering civil Money Penalties to the Vendor, no option is given to the Vendor. **Federally mandated sanctions, conviction of trafficking of WIC Food Instruments; conviction of illegal sales of firearms, ammunition, explosives or controlled substances; and/or Vendor assessed a third or subsequent sanction of any violation in the mandatory sanction category (Federal Violations) as defined in this section are exempt from this provision.**

If inadequate participant access occurs in an area where the only Vendors are either serving a disqualification period or in the disqualification process, the following criteria shall be used to determine which Vendor is first offered Civil Money Penalties.

- First: The Vendor whose sanction of disqualification was derived from the lowest point value. For example, 9 sanction points are better than 13 sanction points, etc.
- Second: If the first criteria results in a tie among the Vendors, the Vendor with the least time remaining in the disqualification period will be the one offered the Civil Money Penalties.

If the best candidate for Civil Money Penalties is a Vendor already serving a disqualification, the option will be offered to that Vendor to return to the program. This reauthorization shall occur only after the Vendor submits a

Corrective Action Plan which is approved by the Department, a collateral bond or Irrevocable Letter of Credit for the amount established in this policy and receipt of the Civil Money Penalties.

As this should be an extremely rare occurrence, this is the only section of the Civil Money Penalties policy that will mention alternative choices to Vendors. However, this section has been added to assure that the Department is under no obligation to offer Civil Money Penalties to any Vendor.

This section will supersede the others, if the above stated conditions are present. In addition, the agency will assure that a Vendor who pays Civil Money Penalties is one that the Department can successfully monitor.

### **When Civil Money Penalties Cannot Be Offered**

Regardless of participant access, Civil Money Penalties shall not be offered when the disqualification is based on:

1. Conviction of trafficking of WIC Food Instruments;
2. Conviction of illegal sales of firearms, ammunition, explosives or controlled substances; or
3. Vendor assessed a third or subsequent sanction of any violation in the mandatory sanction category (Federal Violations) as defined in this section.

### **Procedure for Assessing a Civil Money Penalty**

After determining that a participating WIC Vendor should be disqualified from the program, the Department shall review the case to determine participant hardship. This review shall take place prior to notification of disqualification so that the Vendor shall be made aware of its alternatives at the time of notification.

If the Department establishes participant hardship and determines that Civil Money Penalties are an appropriate alternative, the Department shall contact the Vendor to schedule a meeting.

Prior to, or at the time the Vendor is contacted to schedule a meeting, the Vendor shall be sent a written notice of the disqualification sanction. This notice should include cause(s) for the disqualification, the effective date of the action, the Vendor's right to appeal, and the procedures to be followed to file an appeal. This notice shall also notify the Vendor that the Department has decided to offer Civil Money Penalties in lieu of disqualification and that the Vendor will be contacted to schedule a meeting with the Department to discuss the Civil Money Penalties offer.

The meeting shall be used to offer the alternative of Civil Money Penalties in lieu of disqualification. The meeting shall cover the following:

1. The amount of the alternative Civil Money Penalties (as determined by the following procedure for calculating Civil Money Penalties);
2. The method of payment of the Civil Money Penalties available to the Vendor;
3. Discussion of all non-compliance issues, not just those that brought about the disqualification.

Also, at the meeting, the Vendor shall be advised of the following:

1. Payment of the Civil Money Penalty settles all past non-compliance issues, but does not relieve the Vendor of its obligation to complete a Corrective Action Plan approved by the Department to resolve identified problems or protect the Vendor from future sanctions or disqualification for continued non-compliance;
2. When determining disqualifications, past violations settled by Civil Money Penalties may be considered, at the discretion of the Department, if additional violations of the same nature occur;
3. The Vendor has fifteen (15) calendar days after the meeting to accept the alternative Civil Money Penalties in writing, in lieu of disqualification; and
4. The Civil Money Penalties settlement does not prohibit further WIC investigations.

## Procedure for Calculating Money Payment

All Civil Money Penalties issued by the Department will be calculated using a standard formula. However, the penalty shall not exceed \$10,000 per violation and \$40,000 per investigation even if the formula indicates that a higher penalty is warranted. The formula is as follows:

Step I: Multiply 10% (.10) times the average monthly redemptions for the most recent six (6) calendar months period prior to the date of notification of violations.

Step II: Multiply the product of Step I by the number of months of the disqualification period.

Note: Instances of other violations that have not yet reached disqualification sanction shall not be used to calculate the Civil Money Penalties. The calculation for Civil Money Penalties shall be based solely on the disqualification period that brought about the action.

**Example** Vendor is notified of two-year disqualification starting October 2000.

Civil Money Penalties in lieu of disqualification would be calculated as follows:

Monthly redemption for the most recent six (6) calendar months

September	\$ 4,050
August	4,075
July	4,120
June	4,180
May	4,290
April	<u>4,275</u>
	<u>\$24,990</u>

Step I =  $\$24,990 \div 6 = \$4,165.00 \times 10\% = \$416.50$

Step II: =  $\$416.50 \times 24 \text{ months} = \underline{\$9,996.00}$

## Payment of Penalties

The payment of the Civil Money Penalties must be made by one (1) of the following methods as determined by the Department.

1. A lump sum payment of the Civil Money Penalties shall be received on or before the date the disqualification to become effective; or
2. Installment payments of equal amounts, the total number of which cannot exceed one half the number of months of the disqualification, and shall be paid with interest as authorized by State law.

The first installment must be received by the Department on or before the date the disqualification is to become effective. The subsequent payments must be received on the first day of the month for all subsequent months until final payment is received. If a Vendor fails to make any scheduled installment payment by the due date, the Department shall notify the Vendor that the balance of the Civil Money Penalties are due within twenty (20) calendar days or the full disqualification sanction shall be implemented.

All Payments (either lump sum or installment) shall be made by **certified check** or **money order** payable to the “**Arizona Department of Health Services WIC Program**” and must include the Vendor’s name and ID number. **Payments must be sent by certified mail to:**

**Arizona Department of Health Services  
WIC Program – Food Delivery/Program Integrity Team  
2927 North 35<sup>th</sup> Avenue, Suite 400  
Phoenix, Arizona 85017**

A Vendor who does not pay, only partially pays or fails to timely pay, Civil Money Penalties shall receive the disqualification corresponding to the violation(s) for which the Civil Money Penalties were assessed